

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 99-0219  
STATE GROSS RETAIL TAX  
For Years 1995, 1996, AND 1997**

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**ISSUES**

**I. State Gross Retail Tax—Adequate Documentation**

**Authority:** 45 IAC 15-5-4; IC § 6-8.1-5-1; IC § 6-8.1-5-4

Taxpayer protests the proposed assessments of Indiana's State Gross Retail tax.

**STATEMENT OF FACTS**

In the course of taxpayer's auction business operations taxpayer conducted auctions both at its main location and at its customer's premises. When audited, taxpayer informed the auditor that all auctions occurred at the customer's premises, thus sales tax was not collected. The auditor determined, based on review of existing documentation- including advertising for auctions at the taxpayer's location- that 37% of taxpayer's auction business was conducted onsite and thus subject to Indiana's Gross Retail tax. The departmental audit assessed the taxpayer Gross Retail tax on 37% of its sales. The taxpayer protested the audit determination stating documentation would be provided to counter the audit's determination. Taxpayer and his representative then filed a protest, claiming the documents would be made available.

**I. State Gross Retail Tax—Adequate Documentation**

**DISCUSSION**

Taxpayer protests the proposed assessments of Indiana Gross Retail tax arguing that he now has available for inspection documents supporting his contention that the percentage of sales conducted at taxpayer's premises was not 37% as determined in the audit. Because of taxpayer's reluctance to timely provide the proper documents to the auditor a hearing was set before one of the Legal Division's Hearing Officers. At the hearing, taxpayer's representative stated that records would be made available within a specified time period. Said records were not provided within the time period, nor has taxpayer provided any indication that said records will be produced.



This issue revolves around the burden of proof in an audit situation, which IC § 6-8.1-5-4 defines as:

Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

Taxpayer does not cite any statute, regulation, or case law for the proposition that the auditor was required to accept taxpayer's assertions as to the nature of the transactions without any- and in fact, contrary to- supporting documentation. Pursuant to the above statute and the requirements of IC § 6-8.1-5-1 and 45 IAC 15-5-4, taxpayer has failed to establish a basis for reversal of this assessment.

### **FINDING**

Taxpayer's protest is denied.